

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 291 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

THE COMMISSIONER OF INCOME-TAX,

Versus

GUJARAT STATE FOREST DEVELOPMENT CORP.

Appearance:

MR MANISH R BHATT for Petitioner
NOTICE NOT RECD BACK for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 03/05/99

ORAL JUDGEMENT

1. Mr. J.P. Shah appears for the respondent.
Service is complete. Heard learned counsel for the parties. It has been pointed out by both learned counsel that the assessment out of which the present application has arisen are made in pursuance of an order under

Section 263 of the Income Tax Act. The order under Section 263 has been set aside by the Income Tax Appellate Tribunal. A reference is pending before this court on a question of law said to be arising out of that order which has been referred to this court. As a consequence, it is stated by both the learned counsel, the question of law stated in this application under Section 256(2) is required to be referred to this court at the instance of Commissioner of Income Tax.

2. Accordingly we allow this application and direct the Tribunal to submit the statement of case and refer the following question of law for the opinion of this Court arising out of its appellate order in Income Tax Application No. 4585/Ahd/1992 for assessment year 1985-86:

"Whether on the facts and in the circumstances of the case the Tribunal is right in law in holding that the royalty cannot be treated as 'tax' or 'duty' within the meaning of Sec.438, when it is clearly held by Supreme Court in the case of India Cement Company (188 ITR 690) that royalty is a tax?"

There shall be no order as to costs.

(Rajesh Balia, J)